

# Monitoring & Enforcement



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

*Office Of Civil Rights*

*ACHIEVING SAFETY  
THROUGH DIVERSITY*

**Presented by: Office of Civil Rights  
National Airports External Program  
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# Agenda

- Regulatory Requirements – Keturah Pristell
- Monitoring Requirements and Strategies for Implementation – Patricia Wright
- Self-Assessment – Gene Roth & Thomas Knox

# Learning Outcomes

- Identify monitoring & enforcement mechanisms to ensure that work committed to DBEs and ACDBEs at contract award is actually performed by those DBEs and ACDBEs
- Create a “running tally” of actual payments to DBE firms
- Identify enforcement provisions

# REGULATORY REQUIREMENTS

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# Regulatory Requirements - DBE

## 49 CFR 26.37

- (a) Implement Appropriate Mechanisms to Ensure Compliance by ALL PROGRAM PARTICIPANTS
- (b) Ensure Work Committed to DBEs is Performed by DBEs
- (c) Written certification that you have reviewed contracting records
- (d) Keep a Running Tally of DBE Participation

# Regulatory Requirements - DBE, *cont'd.*

## DBE Contract Administration

Recipients' contracts must contain these provisions (26.13):

1. Non-discrimination
2. Prompt payment (26.29)

[http://www.faa.gov/documentlibrary/media/advisory\\_circular/150\\_5370\\_10F.pdf](http://www.faa.gov/documentlibrary/media/advisory_circular/150_5370_10F.pdf) (released 9/30/2011 – see pages 52-54)

# Regulatory Requirements - DBE, *cont'd.*

3. Retainage (26.29)

4. Enforcement provisions (26.105(a))

# Regulatory Requirements - ACDBE

## 49 CFR 23.29

- (a) Implement Appropriate Mechanisms to Ensure Compliance by ALL PROGRAM PARTICIPANTS
- (b) Ensure Work Committed to ACDBEs is Performed by ACDBEs
- (c) Written certification that you have reviewed contracting records
- (d) Goals submittal (car rental & non-car rental)



# Regulatory Requirements - ACDBE, *cont'd.*

## ACDBE Nondiscrimination and Assurance

### §23.9

- Recipients' contracts must contain non-discrimination provisions applicable to concession agreements, management contracts or subcontracts, purchase or lease agreements, or other agreements
- Assurances language required in all concession and management contracts

# Regulatory Requirements - ACDBE, *cont'd.*

## ACDBE Records and Reports

### §23.27

- Program Implementation
- ACDBE Certifications
- Award and Performance of Agreements and Contracts

*Data must be retained for a minimum of 3 years.*

- Annual report of ACDBE participation using Appendix A form

# MONITORING REQUIREMENTS

# Monitoring Requirements - DBE

## 49 CFR 26.11(a)

Recipient must have, maintain, and/or transmit:

- Uniform Report of DBE Awards or Commitments and Payments
- Data about your DBE Program
- Bidders List (49 CFR 26.11)
  - **ALL** firms bidding or participating (primes and subs)
  - Name, address, age of firm, and annual gross receipts
  - Firms' DBE or non-DBE status
- Certification records (for certifying agencies)

# Ensure DBEs' Performance of Contracts

26.37

- Written Certification of Contract Review
  - Contract Review Process
  - DBE Subcontract Review
- Written Certification of Work-Site Monitoring

# Monitoring Requirements - ACDBE

- Must implement mechanisms to ensure compliance with the Regulations
- ACDBE Program document must contain specific provisions to be inserted into concession agreements and management contracts outlining enforcement mechanisms
  - Written certification of contract, lease, JV, and other concession-related agreements have been reviewed

# STRATEGIES FOR IMPLEMENTATION

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# Running Tally of DBE Participation

- Ensure Prime is Meeting DBE Commitment
- Track DBE Awards and Commitments
- Track Payments Made to DBEs



# Appropriate Compliance Mechanisms

- Examples of what you should consider creating policies and procedures for:
  - Certification (if you are a certifying agency)
  - Prompt payment
  - Bid document submittal
  - Good Faith Effort reviews (in a race-conscious program)
  - Liaison officer duties
  - Uniform Reporting
  - Etc.

# Ensure DBEs' Performance on Contracts

## Project Oversight is a Team Effort!

- Involve Project Inspectors and Project Engineers
- Create DBE Program Oversight as an Essential Job Function of Multiple Parties

# ENFORCEMENT ACTIONS

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# Enforcement Actions

- 26.107

## Enforcement Actions Against Contractors

- Involve the OIG
- Suspension/Debarment
  - DBE “front” or DBE that does no work
  - Ineligible firm fraudulently attempting to participate

# USDOT Monitoring and Enforcement

- Complaint Investigations
  - Specific Allegations of Non-compliance
- Compliance Reviews
  - Overall Assessment of DBE Program Implementation
- Enforcement Actions
  - Conciliation Agreement
  - Finding and Reporting of Significant Non-Compliance
  - Restrict Drawdowns
  - Ineligibility to Start, Continue, or Complete a DOT-assisted Project

# Self-Assessment

## Discussion

How well are you monitoring and enforcing your DBE and/or ACDBE Program?



# HANDOUTS

Commercially Useful Function:

<http://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf>



Thank you!

